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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 JULIO DE ARMAS DIAZ,
15 Defendant.

Case No. 2:13-cr-148-JAD-GWF

**ORDER GRANTING
UNOPPOSED MOTION FOR LATE
FILING OF NOTICE OF APPEAL**

ECF No. 374

16
17 COMES NOW the defendant JULIO DE ARMAS DIAZ, by and through his counsel,
18 Amy B. Cleary, Assistant Federal Public Defender, and respectfully requests this Court enter
19 an Order excusing Mr. Diaz's late filing of a Notice of Appeal to the United States Court of
20 Appeals for the Ninth Circuit from the Judgment of Conviction, entered on October 18, 2017,
21 imposing a sentence of 103-months' custody. ECF 372.

22 Dated this 3rd day of November, 2017.

23 RENE L. VALLADARES
24 Federal Public Defender

25 /s/ Amy B. Cleary
AMY B. CLEARY
26 Assistant Federal Public Defender

1 **POINTS AND AUTHORITIES**

2 Federal Rule of Appellate Procedure 4(b)(4) states: “Upon a showing of excusable
3 neglect or good cause, the district court may—before or after the time has expired, with or
4 without motion and notice—extend the time or filing a notice of appeal for a period not to
5 exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).” *See*
6 *Fed. R. App. P. 4(b)(4)*.

7 This Court resentenced Defendant Julio de Armas Diaz on October 17, 2017. The
8 Judgment of Conviction was entered on October 18, 2017. ECF 372. As such, a Notice of
9 Appeal was due by November 1, 2017. *See Fed. R. App. P. 4(b)(A)(i)*.

10 On October 30, 2017, the Office of the Federal Defender received a letter from Mr.
11 Diaz, indicating he wanted to appeal his sentence. Mr. Diaz addressed his letter to Assistant
12 Federal Public Defender Brenda Weksler, who is lead counsel for Ryan Payne in *United States*
13 *v. Bundy, et al.*, District of Nevada, Case No. 2:16-cr-00046, and was in the midst of jury
14 selection in the District Court and trial preparations. Mr. Diaz’s letter was brought to
15 undersigned’s attention on November 2, 2017. Undersigned counsel thus prepared the instant
16 Motion for Late Filing of Notice of Appeal on Mr. Diaz’s behalf.

17 Mr. Diaz is within the 30-day rule prescribed by Federal Rule of Appellate Procedure
18 4(b)(4) to request this extension. In this case, good cause has been shown, as the late filing is
19 not the fault of Mr. Diaz, but instead, the fault of the Federal Defender’s Office.

20 On November 3, 2017, undersigned counsel contacted the Appellate Chief for the
21 United States Attorney’s Office, Elizabeth Olson White, who advises she has no objection to
22 undersigned counsel filing an out-of-time notice of appeal on Mr. Diaz’s behalf.

23 Mr. Diaz, therefore, respectfully requests an extension of time to file the attached Notice
24 of Appeal. The equities support this Court entering an Order allowing Mr. Diaz to file an out-
25 of-time Notice of Appeal. Undersigned counsel will electronically file the attached Notice of
26 Appeal, upon receipt of the Court’s Order granting the filing of such.

1 DATED this 3rd day of November, 2017.

2 Respectfully submitted,
3 RENE L. VALLADARES
4 Federal Public Defender

5 By: /s/ Amy B. Cleary

6 AMY B. CLEARY
7 Assistant Federal Public Defender
8 Attorney for Julio de Armas Diaz

9 **ORDER**

10 Good cause appearing, IT IS HEREBY ORDERED that the Unopposed Motion for Late
11 Filing of Notice of Appeal [ECF No. 374] is **GRANTED**.

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13 U.S. District Judge Jennifer Dorsey

14 Dated: 11/14/2017
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